

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Sam Duthoy</b>	:	
<b>-vs-</b>	:	
<b>Commonwealth Edison Company</b>	:	<b>12-0493</b>
	:	
<b>Complaint as to billing/charges in Chicago,</b>	:	
<b>Illinois.</b>	:	
	:	

**PROPOSED ORDER**

By Order of the Commission:

On August 27, 2012, Samuel Duthoy ("Complainant") filed a Complaint with the Illinois Commerce Commission ("Commission") against Commonwealth Edison Company ("ComEd" or "Respondent") regarding the rate used to compute his bill for electric service from November 1997 until March 12, 2012. It is agreed that during this period he was a residential customer, although he was billed and paid for service at a higher commercial demand rate.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a prehearing conference was held before an Administrative Law Judge ("ALJ") at the Commission's offices, in Chicago, Illinois, on September 25, 2012. An evidentiary hearing was held on June 13, 2013 at which time the Complainant appeared pro se and the Respondent was represented by counsel.

The ALJ's Proposed Order was served on the parties on July 11, 2013.

**I. The Complaint**

Mr. Duthoy's Complaint seeks a refund of the difference between the commercial rate for electric usage he was charged and the lower residential rate at which he was entitled to be charged for service at his single family residence located at 1406 W. Erie, Chicago, Il. ("residence") from November 1997 until early March 2012.

Mr. Duthoy purchased the residence from two attorneys who had resided there prior to him. He closed on and moved into the property in November 1997. At the time he moved in he called up ComEd and requested "electrical service at my residence." At no time did he have a conversation with a ComEd representative about his residence being a "commercial property."

He paid bills received from ComEd for service at his residence every month until March 2012. He then called to discontinue service in his name at that address because he had sold the residence. At that time, the ComEd service representative told him that the account he was calling about had been billed as a commercial account. He learned

that he had been paying for service at the higher rate since November 1997. After investigation ComEd agreed that his account should have been billed at the lower residential rate.

Mr. Duthoy unsuccessfully attempted to recover the difference between what he paid for electricity and the amount he would have been billed at residential rates for the period in question. He was unable to resolve this dispute with ComEd despite many telephone calls and emails. ComEd told him that it could only retrieve his bills for a roughly twenty two month period from May 2010 through March 8, 2012.

He stated that his residence had been used as a residence by the previous owners, who were attorneys. There was nothing about the appearance of the building when he purchased it that would indicate it was or had been a commercial structure. He does not disagree with ComEd's calculation of the difference between the two rates for the period reflected on ComEd Exhibit 1.

## **II. ComEd's Position**

ComEd witness, Nelly Davila, is a senior supervisor in the billing operations department. She has reviewed Mr. Duthoy's residence account which had been a small commercial account prior to the time he started to receive service. It is ComEd's practice that a new customer for an existing service address picks up the rate that has already been established at the address. ComEd's records indicate that the previous account holder had a commercial account. The meter number for this account was associated with that type of account appropriate for a small business office or a corner store. The account had a kilowatt hour demand meter. Every bill for this account contained the words "Commercial Demand Account" on the face of the bill. The significance of that phrase is not explained on the bill document. Residential accounts in the same area of the bill contain the words "Retail Delivery Service."

The Company contends that the customer is responsible under its tariffs for rate selection when there is a choice of rates. ComEd Exhibit 4, a copy of Tariff sheet 151 is the relevant tariff for rate selection. In 2012, when Mr. Duthoy was informed about the rate charged at his residence, ComEd performed a rate check to determine the appropriate rate. On the basis of that rate check, it exchanged the meter and changed the account to a residential rate for subsequent billing.

Under the commercial rate the amount charged varies depending on the usage. Under the residential rate, the charge per kilowatt does not vary. The Company witness said it has a computer program that allowed it to compute what his bill should have been at residential rates for the period of time that it was able to retrieve his service history and bills. That information for the period from May 2010 to March 2012 is listed on ComEd Exhibit 1. The difference between the two rates for that twenty two month period was \$304.70 or an average of \$13.85 per month. The time period at issue is approximately 172 months. The Company does not have records about his monthly bills for any time prior to May 2010.

On cross examination, Ms Davila admitted that almost no one calling to order service inquires about tariffs. She also stated that there was nothing about his usage pattern that would flag it as a commercial account.

There was a discussion on the record about the rate of interest payable on any amount that might be owed to Mr. Duthoy due to overpayment. Neither party disagreed with the rate of interest set annually by the Commission for payment on utility customer deposits. A statement of those rates for the years 1997 through 2012 was included in the record as ALJ Exhibit 1. The rate varied from 6.5% to 0% during the years in question. Mr. Duthoy stated that he if he prevailed on his complaint and was awarded a refund, he would be satisfied with \$200 in interest on the amounts owed to him rather than making a year by year calculation.

### **III. Commission Analysis and Conclusion**

There are no facts in dispute. Mr. Duthoy's unrefuted testimony is that he contacted ComEd in 1997 and requested residential electric service for his new home. It is agreed that he was entitled to be charged at the residential rate. Because the account of the previous owners of his residence was established (perhaps in error) as a commercial account, Mr. Duthoy's account was also billed as a commercial account despite his request for residential service. He paid his monthly bill at the incorrect rate for almost 15 years. When he contacted ComEd to transfer service to his new residence, he was informed about the discrepancy in the rates. He then determined that he had been overcharged and requested the residential rate for future service and a refund for the entire time he had been paying the commercial rate. When his request was denied by the Company, he filed a timely complaint with this Commission seeking a recovery of the difference between the two rates.

ComEd relies on general language in its tariff that states that the customer is responsible for tariff selection and that the customer is not entitled to refunds if he was eligible for a better rate but failed to select it. This argument is not supported by the facts. With no knowledge that he had any other choice, Complainant requested residential service at the residential rate. The Company did not comply with his request. Instead it charged him at a higher inappropriate commercial rate that had been established for this address by an unidentified prior owner of the premises. The Company charged him this rate in error for almost 15 years. The Commission finds that pursuant to Section 5/9-252.1 of the Act, the Complainant is entitled to a refund and appropriate interest.

Under Section 5/9-252.1 of the Act, the only limitation on the period of recovery of an overcharge is that the complaint must be filed no more than 2 years after the discovery of the discrepancy by the customer. Mr. Duthoy learned of the billing error in March of 2012 and filed his complaint with the commission in August of that same year. Therefore his complaint is timely and he is entitled to a refund that encompasses the entire time he was overbilled. The evidence establishes that he was overcharged an average of \$13.85 per month from May of 2010 until March of 2012. Neither party has billing records prior to that time. In the absence of any records to the contrary, It is reasonable to assume that \$13.85 was the approximate monthly overcharge on each of his bills dating back to the inception of his account in November 1997. This is approximately 172 months. At \$13.85 per month, this comes to \$2382.20 plus interest.

The calculation of an award of interest in this case is problematic. The Commission finds that the rate set by the Commission for utilities to pay on customer

deposits is an appropriate benchmark in this case. Although that rate varies from year to year, the cumulative total for 172 months of overpayment would be hundreds of dollars. Mr. Duthoy stated that in lieu of making that calculation he would accept an interest award of \$200. The Commission finds under the circumstances that this is a reasonable compromise of the interest due Mr. Duthoy.

#### **IV. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent, Commonwealth Edison Company, is an Illinois corporation engaged in furnishing electric service in the State of Illinois and, as such, is a public utility within the meaning of the Illinois Public Utilities Act;
- (2) Complainant, Samuel Duthoy, is a resident of Illinois and a customer of Commonwealth Edison Company.
- (3) the Commission has jurisdiction over the parties and the subject matter herein;
- (4) the findings of fact and the conclusions of law set forth in the prefatory portion of this Order conform to the evidence of record and the law and are hereby adopted as findings of fact and law herein;
- (5) the Complainant was charged at an incorrect rate for electric service from November 1997 until March 2012;
- (6) Commonwealth Edison Company shall pay the Complainant the sum of \$2582.20 plus interest from the date of this Order.

IT IS THEREFORE ORDERED that the Complaint filed by Samuel Duthoy on August 27, 2012 against Commonwealth Edison Company be, and the same is sustained.

IT IS FURTHER ORDERED that all motions, petitions and objections made in this proceeding, which are not disposed of, be and are hereby disposed of consistent with the ultimate conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.

Dated:  
Briefs on Exceptions Due:  
Reply Briefs on Exceptions Due:

July 11, 2013  
July 24, 2013  
July 31, 2013

Terrance A. Hilliard  
Administrative Law Judge